

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

TERRENCE BERNARD STOKEY,

Plaintiff,

v.

**Civil Action No. 5:07cv97
(Judge Stamp)**

**JOE DRIVER, Warden;
LAPPINS, Director of the
Bureau of Prisons,**

Defendants.

**REPORT AND RECOMMENDATION THAT APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES BE DENIED**

On July 30, 2007, the *pro se* plaintiff, Terrence Stokey, filed a Petition for a Writ of Mandamus. He also filed an Affidavit in Support of Request to Proceed In Forma Pauperis, a certified copy of his inmate account statement, ledger sheets, and a consent to collection of fees from trust account.¹

The ledger sheets and certified copy of his inmate account statement reveal that the plaintiff had an account balance of \$400.52 as of July 21, 2007. Consequently, the plaintiff had sufficient funds to pay the \$350.00 filing fee. Accordingly, the plaintiff's request to proceed without prepayment of fees should be denied, and the plaintiff should be ordered to pay the full filing fee. The plaintiff should also be warned that the failure to pay the full filing fee within the time allowed by the Court will result in the dismissal of his complaint.

¹The undersigned notes that the Clerk of the Court mistakenly sent the plaintiff a Notice of Deficient Filing which advised him that he must either pay the \$350.00 filing fee or submit an Application in Forma Pauperis to proceed without prepayment of the filing fee, a Consent to Collection of Fees from Trust Account, and a Prisoner Trust Account Report. In so doing, the Clerk apparently overlooked the fact that the plaintiff had already submitted those forms with his Exhibit A which includes the Judgment Order from the United States District Court for the Eastern District of North Carolina.

The plaintiff may file, within ten (10) days after being served with a copy of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985) United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the *pro se* plaintiff by certified mail, return receipt requested, to his last known address as shown on his docket sheet.

DATED: August 2, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE